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File No. O. Endoments 48.

Legal **DEPARTMENT**

A. **BRANCH**

Subject:— O. Endoments.

Opinions under the charitable endowments [1890] Act; ff 1890

P=54/E

File No. O. Endowments 48.
Std. Sectt. Slip 24 B a.

128-A.

C O N T E N T S.

Legal Department File No. 6. Endowments/48

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Office of the R.L.A.

Modification of Scheme - Sanction of Court necessary Charitable Endowments Act, 1890 - section 5.

The Principal of Fergusson College, Poona, States that in view of the modification of the science courses by the University students can no longer take German as an optional subject and therefore it is becoming difficult to find suitable students for the award of Scholarships. In order that the money may not remain unutilised, he requests Government to modify the original scheme sanctioned by Government in Government Notification, Educational Department No.3766, dated 19.12.1913 as modified by Government Notification, Educational Department No.1890, dated 16.7.1910 in one or more of the three ways as suggested below:-

(1) The scholarships may be changed into "open scholarships not restricted to any one community.

(2) M.Sc. and Ph.D., students offering "German" for the translation paper may be considered to be eligible. (In view of the original intentions of the donor, to encourage the study of German, particularly on account of its usefulness to students of Science and Technology, this would be in conformity with the same).

(3) "French" in addition to "German" may be included as the language for the award of the scholarships.

The Director of Public Instruction, Poona, requests sanction for the proposal. The Under Secretary, Educational & I. Department is of the view that in view of condition No.5 it does not appear that Govt. is competent to modify the scheme on the lines suggested by the Principal and the changes proposed are material deviation from the main object of the donor. The R.L. is requested to advise whether there is any objection to the scheme being modified on the lines suggested by the Principal if the heirs of the late K.P.Joshi agree to the proposed changes.

2. Subclause (b) of clause 2 of the conditions of the Scheme for the administration of the Fund provides for award of two scholarships from 1916 of the value of Rs.15 and one scholarship of Rs.14 monthly to three Konkanastha (Chitpawan) Brahman students who have passed the matriculation examination . . . . with the highest number of marks in the German language etc. Clause 3 provides that in the event of German ceasing to be taught at the Fergusson College, the scheme may be modified by Govt. in such manner as to provide for the scholarships being held by Konkanastha Brahmins studying German at any other college approved by Govt. Clause 2 & 4 provides that any income remaining unspent shall be invested by the administrator and added to the fund, and subject to any modification of the scheme the interest of such additional investments shall be added to the value of the scholarships. Clause 5 provides that subject to the foregoing provisions the management of the said securities and the disposal of the income thereof shall be in the sole discretion of the Government, due regard being had to the object for which the donation has been made by Mr.K.P.Joshi.

It appears from the scheme as also from the letter of the donor dated 27th January 1913 that the main object of the donor in establishing the fund was the encouragement of the study of the German language by the Konkanastha (Chitpawan) Brahmin students at the Fergusson College, Poona. And it was only in the event of the German ceasing to be taught at the said College, this scheme could be modified by Govt. to provide scholarship for Konkanastha Brahmins studying German at any other College. The Principal's proposal is to throw open the scholarship without any restriction as to caste or community and also to make it available to students studying French. Such a proposal would mean material deviation from the main object of the donor. The trust has not become incapable of

being executed by reason of there being no Konkanastha Brahmin student attending the College. If the number of students fall it would be more in accord with the donor's wishes to modify by making the scholarships available to students studying in higher classes or to students studying in other colleges but belonging to the Konkanastha Brahmin community. In view of the conditions stated in the scheme and particularly condition 5 it appears that save with the sanction of the Court, Government would not be competent to modify the scheme on the lines suggested by the Principal even if the heirs of the donor agree to the proposed changes. The view taken by the Under Secretary, Educational & I. Department at page 8 ante is correct.

Id/- P.M.L. 26/5

Remembrancer of Legal Affairs.

U.R. to E. & I.D. No.5006, dated the 26th May 1948.

KAN/25-5.
4 c.

R.I. No. 7661 dated 21.6.1948.

Submitted.

2. In accordance with the Scheme of the Sir Sasson David Trust Fund, published in G.N. E.D. No. 934, dated the 10th April 1912, the trust is to be administered by a Board consisting of

(i) the Secy. to Govt. R.D. (ex-officio)

(ii) the Secy. to Govt. E.D. (ex-officio)

(iii) and (iv) two gentlemen to be nominated by H.E. the Governor

(v) Sir Victor Sasson or his nominee.

D.B. Limaye was appointed as a trustee of the Fund by R.D. notification No. P.410/182, dated 13.1.1944 to be a trustee of the Fund for a period of three years and Sardar Mansinhji Bhasaheb was appointed by R.D. notification No. 410/16370, dated 20.7.1942 for a period of 3 years. The periods of appointment of D.B. Limaye and Sardar Mansinhaji respectively expired in January 1947 and July 1945 but they acted as trustees without legal sanction till to-day and A. and R.D.D. propose to appoint them retrospectively upto the period ending 30th September 1948. The R.L.A. is requested to advise in the matter.

3. In accordance with the scheme for the management of the Sir Sasson David Fund, the Trust Fund is to be administered by a Board of Trustees consisting of (1) two Secretaries to Govt. (ex-officio) (2) two persons to be nominated by H. E. the Governor of Bombay and (3) Sir Sasson David or his nominee etc. Under clause (3) of the Scheme all decisions of the Trustees are to be by a majority of votes. Therefore although the term of the two nominated trustees had expired and no persons were appointed in their places it was possible for the Board to take any valid decision by majority of votes of the remaining

trustees present at the meeting. Non-appointment of these two trustees or their absence would not invalidate any decision arrived at by other three remaining trustees. "In cases of charitable trusts, where the courts have adopted a greater latitude of construction than in ordinary cases, directions to appoint new trustees on the happening of a certain event have sometimes been considered to be merely directory and not to confine the exercise of the power to the happening of that event only". (cf. Tudor on Charities, 5th edn, p. 288). It appears therefore that although it may be wrongful not to have appointed the trustees in this case there is nothing in the Scheme itself to show that the administration of the fund is conditional on the full number of trustees being kept up and that a less number were incapable of acting. It does not appear therefore necessary to regularise the decisions taken by the remaining trustees by appointing the two trustees with retrospective effect unless of course the decisions taken were swayed by the vote of any of these two trustees. Even in such an event though they are not legally constituted trustees they could in equity be considered to be constructive trustees for the purposes of the administration of the fund. (pl. see Halsbury's Laws of England, Vol. XXXIII, p. 163).

Sd/- P.S. Nadkarni 25/6

A.L.R. KAN/25-4
4 c.

Reply may be:-

A person who is not legally constituted trustee becomes in equity a constructive trustee where he intermeddles with and acts as trustee in relation to trust property in which case he is also called a trustee de son tort (see Halsbury vol XXXIII p. 163 The responsibility which attached to a trustee may extend in equity to a person who is not properly a trustee if he makes himself a trustee de son tort (ibid p. 192) Mr.D.B. Limaye & Sardar Mansinhji would be deemed to be trustees de son tort after the expirty of their appointment & would be responsible for their acts; & by reason of their acting as trustees even after the expirty of their appointment the administration of the trust would not be rendered unlawful. In any event any retrospective notification regarding their -

Office of the R.L.A.

Appointment of Trustees retrospectively — Charitable Endowments Acts 1890 —

Mr. D.B. Limaye and Sardar Mansinhji would be deemed to be trustees de son tort after the expiry of their appointment and would be responsible for their acts; and by reason of their acting as trustees even after the expiry of that appointment the administration of the trust would not be rendered unlawful. The appointment is made under a scheme framed under section 5 of the Charitable Endowments Act, 1890. The scheme does not restrict the appointment to a period of three years. It only speaks of "nomination from time to time". There would thus be no objection to nominating these two gentlemen retrospectively from the dates on which the period of their original appointment expired.

Id/- P.M.L. 2/7

Remembrancer of Legal Affairs.

U.R. to Agriculture and Rural Development Department, No. 6200, dated the 2nd July 1948.

KAN/25-5.
4 c.

Office of the R.L.A.

Government has issued a press note to the effect that, as regards the existing institutions, it has been decided that those institutions which are not, or cannot be, thrown open to all communities, should not be eligible for grants from the public funds. The Educational Adviser to Government of Bombay in his letter at p.41 suggests that, as there are many institutions which on account of their trust deeds or wills of the donors are not in a position to make any changes immediately and that in some cases it may be necessary to introduce certain changes in the law pertaining to these deeds, it will be advisable to give a year's grace to such institutions and to continue their grant in case they give the assurance that they are prepared to make the necessary changes in their rules and policy as soon as the legal difficulties have been removed. H.P. has asked the R.L.A. to consider whether the introduction of changes in these institutions as contemplated by the Educational Adviser is possible.

2. "To every corporation there belongs a common right the power of establishing bye-laws for the government of their own body; but this privilege cannot authorise the enactment of any rules or regulations that would tend to prevent or destroy the directions of the original founder and objects of the charity." (see Elden v. Poster, 2 P.W.ms., 327; Lewin on Trusts, pp. 483-484). If educational institutions are founded on any trust exclusively for a certain community, it would be a breach of trust, if such institutions are throwing them open to other communities. Consequently, no rules and bye-laws can be framed by such institutions throwing them open to all communities without distinction. It would,

therefore, follow that no assurance, as stated by the Educational Adviser, can be given by any such educational institutions to make the necessary changes in their rules and Policy. It may not also be possible for the trustees of such institutions to apply to the court for allowing them to throw open these institutions to all communities, unless there is some provision in the trust giving them some discretion in this connection; for, the failure to throw open such institutions would merely forfeit Government's grant-in-aid from the public funds but would not amount to a failure of trust, unless any institution exclusively meant for a certain community would have no students of such community to attend. Whether it would be possible for the court to give a direction to the trustees of any charitable educational institution exclusively meant for a certain community to throw it open to other communities would depend upon the terms and conditions of the trust. The primary rule governing the execution of charitable trusts is that the intention of the donor must be observed and the courts will not decree execution of a trust of a charity in a manner different from that intended, except in so far as they see that the intention cannot be executed literally. "If the charity can be administered according to the directions of the founder, the law required that it should be so administered" - Per Cozens Hardy M.R. in Re Weir Hospital (1910) 2 Ch. 124 at p.135. It is abundantly clear from the authorities that, when the donor's directions can be exactly obeyed, the court will not allow any departure from them on the grounds of expediency. The court cannot vary or modify existing charity trusts so as to meet its own views with regard to what it may think most beneficial and for the general advantage

of the public but will see that the trusts are properly administered and that the directions and intentions of the founder are duly carried into effect (see Tudor on Charities p.147).

3. In these circumstances, giving one year's grace to such institutions as proposed by the Educational Adviser to Government, would not serve any useful purpose. It is a matter for consideration whether Government should withhold grant from an institution which, with the best of will to shed its communal character, is not permitted to do so under the existing law. We might usefully await the recommendations of the Tendolkar Committee, who, I understand, have submitted their report. The report will deal primarily with Hindu charities and the question of non-Hindu charitable institutions would have to be separately considered. Upon a consideration of the whole question, it may be possible for Government to undertake legislation authorising courts, on the application of trustees, to enlarge the classes of beneficiaries in proper cases. If, after such enabling legislation is passed, institutions refuse to take advantage thereof and still cling to their communal character, there would be greater justification for Government to stop the grant-in-aid.

Sd/- P.M.L. 1/7

Remembrancer of Legal Affairs.

U.R. to E. & I.D. No.6204, dated the 2nd July 1948.

KAN/26-5.
4 c.

L.D. R. I. No.8674,
Dated 13-7-1948.

Submitted.

By an Agreement dated 21st February 1913 entered into between Khan Bahadur Nowrojee Pestonjee Vakil of Ahemdabad and Secretary of State for India, it was agreed that two buildings in the vicinity of the Civil Hospital, Ahmedabad should be constructed, and that they should be named as the Nowrojee Maternity Hospital and General Hospital for Parsees and Europeans at Ahmedabad. Clause 9 of the agreement reads as follows:

"The Parsee and European wards male and female, shall be reserved for the sole and exclusive use of Parsee and European patients respectively, and shall not be used for any other persons or purposes whatever, even when wholly or partially vacant."

In his letter dated 25th September 1947 the Civil Surgeon Ahmedabad requested the trustees that the room reserved for Europeans in the Maternity ward should be thrown open to the General public in order to relieve congestion in the general maternity ward. The Civil Surgeon Ahmedabad again requested the trustees by his letter dated 7-5-1948 to throw open all the special wards (reserved for Parsees and Europeans) to the general public, firstly to relieve congestion and secondly to provide gynaecological and maternity ward for the use of the students of the B. J. Medical College. Here too, clause 11 of the Agreement prohibits the entry of male or female students in these

special wards except in exceptional cases. The trustees have however temporarily permitted the Civil Surgeon to utilise these wards for the public use but they are doubtful as to whether a permanent arrangement to throw open the wards to the public can be made, in view of the specific conditions laid down in clauses 9 and 11. H. & L.G.D. has forwarded the papers to the R.L.A. for advise, whether if the trustees agree, Government cannot move the Court and get the terms of the agreement changed so as to go away with the existing reservation in the interest of the medical education.

3. It is a general principle of Law that if a trust is capable of being executed according to the intention of the founder and according to the terms laid down by him, then it cannot be altered. But an exception is made in case of ancient charities. In Tudor on Charities it is stated at page 189 as follows "If in cases now under consideration the prescribed mode of carrying out the charitable intention is considered to be impracticable, not merely when it is physically impossible but whenever owing to the change of circumstances or otherwise, a strict adherence to it has become imcompatible with the founder's main charitable intention." In the preamble to the agreement it, is stated

" Whereas it has been hitherto found that suitable accomodation for European and Parsi patients has not been available at the Huttesing and Prembhai Civil Hospital, Ahmedabad and the usefulness of the institution both on the teaching side and medical side, has also been impaired owing to the want of maternity wards where obstetric cases might be treated and clinical teaching in midwifery might be provided for the students of the Byramjii Jijibhoy Medical School and the Nurses belonging to the Ahmedabad and Lely Memorial Nursing Association both of which are attached to the said Civil Hospital etc etc."

From this it is clear that the intention of founder of this Hospital was not only to provide accommodation to Parsi and European patients but also to foster medical education.

KAN/26-5.
4 c.

Office of the R.L.A.

Feasibility of applying to the Court for altering the terms of the Trust-Deed

For throwing open the European and Parsee Wards to the General Public in the Civil Hospital, Ahmedabad.

From the Civil Surgeon's letter dated 6th September 1947 it appears that the room reserved for Europeans on the first floor of the Maternity Ward remains vacant for the most of the year which means that no sufficient beneficieries are forthcoming to take the benefit. This is possibly due to the decrease in the number of European patients in Ahmedabad City. In 1913 when the Deed was executed there may have been sufficient number of European residents in Ahmedabad, at least a possibility of sufficient number being available as many Government servants would be European. There is no possibility of any Europeans going to Ahmedabad hereafter to take the benefit under the Trust Deed and it will be feasible to apply to the Court to have that room thrown open to the General Public on the ground that the Donor's direction in the Trust-Deed has become impracticable for want of sufficient number of beneficieries. If Court grants this order there should be no difficulty in obtaining further order for utilising the same as part of General Ward for training medical students.

The Parsee Ward would stand on an entirely different footing and there is no material on which an application can lie to the Court for the amendment of the Trust-Deed in that respect.

Id/- P.M.L. 30/7

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No. 7199 dated the 30th July 1948.

L.D.R.I. No. 8003
28/6/48.

Submitted:

The facts of the case in brief are as follows:-

One Mrs. T.F.R. Ranikhetwalla, Mrs. M.D.L. Panday and Mrs. J.J. Meher Hemji offered to donate a sum of Rs. 11,000/- in 3% Government Promissory notes to institute a scholarship at the College of Engineering Poona in the name of their father Mr. M.N. Chandabhoy on condition that -

1. from the interest of Rs.330/- accruing on the Government Securities of Rs.11000/- a scholarship of Rs.25/- P.M. should be given to a poor deserving Parsi student studying (as far as possible in the final year class) for the Civil Engineering course in the College of Engineering Poona, and the rem. amt. be credited to the corpus of the fund.

2. the award of the scholarship should be decided by the Principal in charge of the college in association with the Parsi professors of the college.

3. the donors should be informed every year by the Principal of the College of Engineering, Poona the name of the student to whom the scholarship has been awarded.

Government accepted the offer subject to the following 2 conditions agreed to by the donors viz:-
(i) that the investment, management and dispensation of the fund shall be at the discretion of Government.
(ii) that the Trust shall operate in favour of any other institution or institutions by which the College of Engineering, Poona may with the approval of Government be replaced or for such other purposed of a like nature or on the furtherance of the intents specified as shall at any time seem proper to Government.

the necessary G.R. accepting the donation and directing that the donors should be informed of the acceptance, has already been issued. The only thing which remains to be done is the framing of the Schedule to be attached to the Trust Deed of the Engineering College Endowment Fund. The D.P.I. has at this stage taken objection to the donation on the ground that it will be contrary to the adopted policy of Government. In this connection vide G.L., E. & I.D. No. S-49(2) /85 66-E of 12.4.48 wherein Govt. has pointed out that hence-forth donations for prizes scholarships etc in Govt. institutions earmarked for a particular community other than the broad categories of Advanced, Intermediate or Backward might not be accepted. The question for R.L.A.'s consideration is whether it would be legally feasible to approach the donors to throw the scholarship open to wide classes of persons and not to restrict it to the Parsi community or in the alternative to refuse the donation if the donors want to restrict it for Parsee only.

"Gifts for encouragement of learning, as a bequest for the foundation of a scholarship, ——————— and gifts for advancing the education of particular classes of persons are also charitable, as for a school of persons of a particular persuation." —— Commissioner for Income Tax V Pemsel (1891) AC531 (p. 30 of Tudor on Charities).

In Tee V Ferris (1856 2 K & F 357) it was held that "if the testator communicates his wishes to the donee and the donee acquiesces in them, that will amount to an acceptance." (p. 56 of Tudor on Charities)

Further, "although a charitable corporation is not bound to accept property burdened with a trust or condition yet if it does so the trusts or

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Whether the terms on which a donation is accepted can be altered.

From G.R., E. & I. Department No. 8237, dated 14th November 1947 it appears that Government accepted the donation on the terms proposed by Mrs. Tehmina F.R. Ranfkhetwalla. Since the acceptance of the trust by Government is sufficiently indicated by the terms of the Government Resolution itself the execution of the schedule to be attached to the Trust-Deed so as to vest the funds in the Trustees of the College of Engineering Endowments Funds is a formal matter pertaining to administration. In the case of moveables transfer of ownership is sufficient to create a trust.

Since the trust is accepted a trustee is bound to fulfil the purpose of the trust and to carry out the directions of the author of the trust. He cannot renounce the trust and being a charitable trust cannot alter the objects of the trust even with the consent of the author of trust.

The policy of Government innuciated in G.L., E. & I.D. No. S.49(2) 8366-E, dated 12th April 1948 is clearly of a sufficiently later date after the acceptance of the trust and should not affect the trusts already accepted.

Sd/- P.M.L. 31/8

Remembrancer of Legal Affairs.

U. R. to E. & I.D. No.8386 dated 1st September 1948.

KAN/26-5.
4 c.

Office of the R.L.A.

As stated in R.L.A's opinion No.6200, dated 2nd July 1948 it was decided to appoint Sardar Mansinhji Bhagaheb and D.B. N.C. Limaye as Trustees of the S.S. D.T. Fund for the period ending 30th September 1948, retrospectively, from 20th July 1946 on which date their last appointment expired. As they were to be nominated by H.E. the Governor of Bombay, the case was marked to H.E. (Sec. G.). H.P. states that id does not seem necessary to mark the case to H.E. The R.L.A. is requested to advise whether it is necessary to submit the papers regarding nomination of the Trustees of the Fund to H.E.

2. From clause (1) (iii) or (iv) of the Scheme framed under section 5 of the Charitable Endowments Act, 1890, in the matter of the Sir Sassoon David Trust Fund that two persons are to be nominated from time to time by H.E. the Governor of Bombay. In his opinion No. 11566, dated the 3rd December 1947, the R.L.A. observed:

"Under the Constitution Act as now adapted, the Governor exercises all his functions with the aid and advice of the Council of Ministers and there are no functions exercisable in his individual judgment or in his discretion. The result is that in all cases he will now be guided by the advice of the Council of Ministers. Althought, therefore, it may not be considered under the present Act essential that every such case should be shown to the Governor before decision, cases where the provisions of the Act require the Governor to perform certain duties or to issue certain orders under his signature, would ordinarily have to be shown to him before the final

decision is issued."

The nomination to be made by H.E. is in pursuance of a scheme framed under a statute, and in that sense the duty of nomination is a statutory duty to be performed by H.E. the Governor. The scheme itself makes a distinction between H.E. the Governor and the Government of Bombay. It is, therefore, necessary to show the case to H.E. before final orders are passed.

Id/- P.M.L. 31/8

Remembrancer of Legal Affairs.

U.R. to Agriculture and Rural Development Department, No. 8384, dated the 1st September 1948.

KAN/26-5.
4 c.

R.I.No. 10887
30th August 1948.

Submitted.

Please see R. I. A's opinion No. 5006, dated the 26th May 1948. The D. P. I Poona now states that 2nd alternative suggested by the Principal of the Fergusson College in his letter dated 27th March 1948 at page 1 ante does not involve any material deviation from the main object of the donor, which was encouragement of the study of the German Language by the Kunkanastha Chitpavan Brahmin students at the Fergusson College, Poona and ted that the R.L.A. has mistaken the three alternatives sugges, to be a single proposal and if he now agreed with his view then it would be unnecessary to approach the Court for a modification of the Scheme. U.S.E.D states that the D.P. I.s letter was not quite clear and the proposal now made at A on page 35 ante can be achieved. The R.L.A. is requested to see the papers.

2. The original proposal made by the Director of Public Instruction in his letter, dated 27th March 1948, was to throw open the Scholarship to all M.Sc and Ph.D students offering German for the translation paper. Since the present proposal is to make the scholarship available to students studying German and belonging to the Kunkanastha (Chitpavan) Brahmin community at the Fergusson College there appears to be no legal objection to accepting the Proposal under sub-section (2) of sec.5 of the charitable Endorcements Act, 1890. The papers may be 'see and returned'.

Sd/- P.S. Nadkarni 4/10

A.L.R. A may be done

Id/- R.T.K. 5/10

R.L.A. I want the Solicitor to consider whether in view of sub. section (6)

of section 5, Govt. can sanction even this modification.

~~So far scholarships in (a) above are concerned it may be pointed out that~~

Studying German for the Arts course is quite a different thing from studying German for a post graduate science Degree. It is the study of the language as such which the Donor wished to encourage, and not a study of the language as an instrument for science. That is why "arts" cource was insisted upon.

Sub section 2 requires the Concurrence of the applicant I wonder whether he is alive.

Id/- P.M.L. 6/10

Solicitor

Under the schema as amended in 1940 the scholarships to be awarded to Konkanastha (Chitpavan) Brahmin Students who have passed the matriculation examination of the University of Bombay with the highest number of marks in the German language are:-

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Under the scheme as amended in 1940 the scholarships to be awarded to Konkanastha (Chitpawan) Brahmin students who have passed the matriculation examination of the University of Bombay with the highest number of marks in the German language are:

(a) two scholarships of the monthly value of Rs.15/ each to the students continuing such study in order to qualify for higher examination in the Arts course and

(b) one scholarship of the monthly value of Rs.14/- to the student continuing such study in order to qualify for higher examination either in the Arts course or the Science course.

The difficulty pointed out by the Principal Fergusson College relates to Science courses as under the modified science coursesintroduced by, the University of Bombay students can no longer take German as an optional subject. There does not appear to be any such difficulty so far as Arts courses are concerned.

So far as scholarships in(a) above are concerned it may be pointed out that studying German for the Arts course is quite a different thing from studying German for post graduate science degree. It is the study of the langu ge as such which the donor wished to encourage and not a study of the language as an instrument for science. If it impracticable or impossible to award these scholarships to students studying German language to qualify for higher examinations in the Arts course at the Fergusson College, it will be necessary to carry out the wishes of the autho of the trust as far as they can be ascertained from claus of the Scheme by offering scholarships to students studyi German to qualify for higher examinations in the Arts course at any other College approved by Government.

The proposal of the Principal, Fergusson College to offer ~~the~~ these scholarships to M.Sc. and Ph.D. students offering Germa for the translation paper cannot be considered until all the possibilities of the students studying in the Arts course are ~~E~~xhausted.

Therefore is, however, no objection to the scholarsh in (b) above being made available to M.Sc. and Ph.D. students

Id/- P.M.L. 14/10

Remembrancer of Legal Affairs.

U.R. to E. & I. D. No. 9612 Dated 15th October 1948.

KAN/26-5.
4 c.

St. Georges Hospital, Bombay is a Govt. Hospital. The nursing staff attached to this Hospital was formerly provided and maintained by St. Georges Hospital Nursing Association, a society registered under the Societies Registration Act, 1860. Since 1st May 1947 the entire nursing staff attached to the Hospital has been taken over by Govt. and the Association is not required to provide and maintain any nursing staff at the Hospital. Govt. is also contemplating the purchase of the building known as Private Nursing Quarters belonging to the Association in the Hospital compound together with its furniture fittings crockery linen and other things. H.M.(Healt desires that Govt. should ascertain what trusts and bequests exist in favour of the Association and if any such trusts do exist then they should also be taken over by Govt.

2. From H. and L.G.D. note it appears that there are about ten funds operating in favour of the Association. The Sir Leslie Wilson Endowment Fund of Rs. 1,000000/- is one of such Funds. The fund has been established with the amount of Rs. 1,00,000/- which came to the share of Association out of the proceeds of a fete and a race meeting which were held in 1928 in Bombay under the patronage of His Excellency Sir Lesli Wilson the then Governor of Bombay for the benefit of the Hospitals and nursing associations in Bombay. While dealing with this fund D.S. H. and L.G.D. observes:

"The proceeds of the S.H. Fete were contributed mainly by the people of Bombay City and its suburbs and not by European alone and they were intended to be divided amongst the nursin schools for nurses attached to the five public Hospitals in Bombay, of which St. George's Hospital was one. As the St. George's Hospital has ceased to have any connection with the hospital and as it is not carrying out nursing at any other

hospital for the Island at present. The Official Trustee may be asked to approach the Court with a request that the funds should be vested in the Treasurer of Charitable Endowments for the benefit of the training school attached to St. George s Hospital, Bombay."

3. R.L.A. has been requested to advise as regards the strength of the Government case before the Official Trustee is addressed as proposed.

4. From the Trust-Deed at pp. 142-143 of G.D. file No.9398-II Slip L it appears that the amount of Rs. 1,00,000/- was allotted and paid to the Association upon condition that the same shall be invested and become an endowment fund to be known as "The Sir Leslie Wilson Endowment Fund", only interest being available for the current expenses. The Association transferred the said amount to the Official Trustee to hold the same upon trust inter alia, to invest the same in any mode of investment authorised by law for investment of trust funds with power, with the consent of the Committee of the Association to vary such investments and to pay to the Honorary Secretary of the Association in each year such amount as he may demand in writing not exceeding the net interest on the trust fund for the current year. The Trust Deed further provides that if the Association shall cease to carry on the nursing at St. George's Hospital or other the Hospitals for Europeans in the island of Bombay the Official Trustee shall apply to the Court for directions as to the disposal of the trust fund. There is no reference in the Trust-Deed for the maintainance of a training school for nurses.

5. The Trust Deed is nearly twenty years old and it does not seem desirable to go behind the Trust Deed to enquire as to who contributed to the proceeds of S.H. Fete and whether a part of those proceeds could be utilised for Europeans alone. Any such inquiry at this stage is bound to result in fruiless litigation.

6. From the latter part of clause 6 in the Trust Deed it appears that the name of St. Georges Hospital appears in the clause because it was at the date of the Trust-Deed a Hospital.

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From the Trust Deed at pages 142-143 of G.D. file No. 9398-II it appears that the amount of Rs. 1,00,000/- was allotted and paid to the St. George's Hospital Nursing Association upon condition that the same shall be invested and become an endowment fund to be known as "The Sir Leslie Wilson Endowment Fund"; only interest being available for the current expenses. The Association transferred the said amount to the Official Trustee to hold the same upon trust inter alia, to invest the same in any mode of investment authorised by law for investment of trust funds with power, with the consent of the Committee of the Association to vary such investments and to pay to the Honorary Secretary of the Association in each year such amount as he may demand in writing not exceeding the net interest on the trust fund for the current year. The Trust Deed further provides that if the Association shall cease to carry on the nursing at St. George's Hospital or other the Hospitals for Europeans in the island of Bombay the Official Trustee shall apply to the Court for directions as to the disposal of the trust fund. There is no reference in the Trust Deed for the maintenance of a training school for nurses.

2. The Trust Deed is nearly twenty years old and it does not seem desirable to go behind the Trust Deed to enquire as to who contributed to the proceeds of S.H. Fell and whether a part of those proceeds could be utilised for Europeans alone. Any such inquiry at this stage is bound to result in fruitless litigation.

3. From the latter part of clause 6 in the Trust Deed it appears that the name of St. George's Hospital appears in the clause because it was at the date of the Trust Deed a Hospital for Europeans. The object of the trust is,

therefore, not merely to provide nursing at St. George's Hospital as such but to provide nursing at some Hospital for Europeans in Bombay. If St. George's Hospital ceases to be for Europeans, it is open to the Association to carry on nursing at some other Hospital for Europeans in Bombay, and in that case the Association will still be entitled to receive the income of the trust fund.

4. The Association is not carrying on nursing at St. George's Hospital since Government took over the nursing staff attached to that Hospital. The Association, as stated by D.S., H. and L.G.D., is also not able to carry on nursing at any other Hospital for Europeans as presumably there are at present no such Hospitals in Bombay. However that would not mean that the original object of providing nursing at Hospitals for Europeans in Bombay has failed or become impracticable. From the special Report of the Committee of the Association at pages 137 of H. and L.G.D. file it appears that the Bombay European Hospital Trust proposes to establish a new Hospital presumably for Europeans in Bombay and the Association proposes to make arrangements with the Trust Authorities to carry on nursing at this new Hospital. "If there is a possibility that the indicated mode may be affected - perhaps at some future date though not immediately - the cypres principle is excluded. For this reason Lord Thurlow refused to allow a fund given to establish a bishopric in America to be diverted to other subjects, although it was said that 'there was not the least likelihood of there ever being one' appointed and ordered the money to remain in Court until the object should become practicable. ..... And where a testator left

part of his residue as a loan-fund for the benefit of the inhabitants of a village and there was no immediate prospect of there being enough applicants for loans to exhaust the fund, it was held that the gift had not for that reason failed." (Tudor on charities, p. 149 and cases cited in the foot-notes).

5. Under these circumstances if the Official Trustee applies to the Court for directions the only direction that the Court may issue would be to direct the Official Trustee to accumulate the income of the trust fund in his hands pending the establishment of the new hospital or to pay the income in the meanwhile to any other institution providing nursing for European patients in Bombay. There is no likelihood of the Court directing the Official Trustee to hand over the trust fund to the Treasurer of Charitable Endowments for the benefit of the training school for nurses attached to St. George's Hospital.

Id/- P.M.L. 27/9.

Remembrancer of Legal Affairs.

U.R. to H. and L. G. Department, No. 9185, dated the 28th September 1948.

KAN/28-5.
4 c.

L.D.R.I.No.12751 d/- 11-10-1948.

Submitted.

Please see the A. & R.D.D. Office note dated 8th October 1948 at p. 7 ante. By G.R., Reconstruction Department, No. 7243/33 d/- 6th January 1947, Government has accepted an offer of Rs. 5,00,000 from Sheth Amritlal for the College of Agriculture, Anand subject to the terms and conditions mentioned in the G.R. One of the conditions relevant to the point raised in these papers provides that:

> "2(d) After the establishment of the College the donor or his legal representatives shall have the right to recommend annually 10 students in all for admission to the College out of whom two shall be exempted from payment of College fees."

The Director of the Institute of Agriculture presumes that the donor will have the right to recommend six students for exemption from fees when the college becomes a full fledged college, and that all these students need not be from the same class and that the donor can exercise this right even if he does not recommend 10 students. The Director of Agriculture does not agree with this interpretation and thinks that the donor can recommend only for admission to the first year class and that two out of these will be entitled to exemption. The Agriculture and Rural Development Department does not agree with the Director of Agriculture and the papers are referred to the R.L.A. for advise.

The terms and conditions laid down in the G.R. were settled by the Department in consultation with the Solicitor in L.D. and any dispute about their interpretation could have been referred to that officer. The clause in question is clear and

interpretations put upon it by the Director of the Institute as well as the Director of Agriculture are not correct. Under the clause, as it stands, the donor can recommend 10 students in all for admission to the college irrespective of the class and any two out of these will be entitled to exemption.

Sd/- N.P. Rege 19/10

A.A.S.

(I am not agreeable to the above view).

The condition mentioned in para. 2(d) of G.R, R.C.D. No. 7243/33, dated 6.1.1947 is taken from Mr. Munshi's letter dated 23.8.1946 addressed to H.P.M., (vide condition 2(h)). While considering the condition suggested by Mr. Munshi in the R.C.D. office note, it was stated that there was no objection to accepting the condition provided that "the students recommended by the donor possess the minimum qualifications for admission according to the rules and are in the opinion of the Principal reasonably likely to go through the whole course of training provided in the College and qualify for a degree". That appears to be the intention underlying condition 2(d) of G.R. R.C.D. No. 7243/33, dated 6.1.1947. In the A. and R.D.D. office note dated 24.8.1948 it is stated that "The Agr. College, Anand, was started in the year 1947-48 with F.Sc (Agr) class. This year, B.Sc(Agr) class has been opened and next year (1949-50) with the opening of the B.Sc (Agr) class the College will be a full-pledged Agr. College". Reading condition No.2(d) in light of the fact that after the establishment of the College in 1947-48 the Agr. College started with only the F.Sc (Agr) class, it would be evident that the right conferred upon the donor or his legal representative to recommend ten students for "admission to the College" implied the right to recommend ten students for admission to the first year class of the College, out of whom two shall be exempt from payment

Pp.207-213 of File 7243/33.
Pp.119-135 Do
Pp.143-145 Do
Vide p.144 Do
Pp.3.4 ante.

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Re. Donor's right to recommend students for admission to the College of Agriculture, Anand.

According to clause 2(d) of the Government Resolution, the donor has a right to recommend a total number of 10 students for admission in the college every year. The clause does not say that the admission must be confined only to the first yearx class. As colleges generally decide the question of admission from year to year, no practical inconvenience should be felt in permitting the donor to recommend students for admission to any class. Out of the students so recommended by him for admission the donor has the further right to recommend the names of two students for the grant of exemption from fees. The fact that in future there will be more classes than one will not give the donor a right to recommend more than two students for free-ships in any year. Even if the donor recommends students for admission to classes of different years, the freeships must not exceed the number of two. In case the donor does not recommend any student for admission to any class in the College, the concession of freeship would naturally be held in abeyance for that year, since it is only out of the students recommendedx by the donor for admission that freeships are to be given to two students.

Id/- P&M.L. 29/10

Remembrancer of Legal Affairs.

U.R. to A. & R.D.D. No. 10197, dated the 29th October 1948.

KAN/28-5.
4 c.

L.D. R.I. No. 1157 dated 1.9.1948.

Submitted.

Please see R.L.A's opinion No. 7199, dated 30.7.1948 where it was held that it would be possible to move the Court to get the terms of the trust deed changed so as to throw open the wards reserved for Europeans in the Civil Hospital Ahmedabad but that it would not be possible to do so in the case of wards reserved for Parsees. Now a further reference has been made as to whether, if the Civil Hospital is reconstructed on a new site and shifted to from the present place, Govt. would be still bound to maintain a separate maternity Hospital constructed out of Khan Bhadur Vakil's donation. R.L.A. is requested to advise.

3. It is true that there is no clause in the indenture entered into between the Secretary of State and K.B. Vakil for the continuation of reservation, if, for any reason the existing Hospital is shifted to a new site. Yet the liability of the Crown to continue the execution of trust under the indenture of 1912 will not cease merely by shifting the Hospital to a new site.

Clause 1 of the Indenture runs as follows:-

"The Secretary of State shall with the amount aforesaid construct in the vicinity of the said Civil Hospital at Ahmedabad, as set forth in the Schedule attached hereto, two buildings, one with an upper story (hereinafter called Building 2) and the other without an upper story (herein after called Building No.) as per plans and specifications approved of and signed by the said K.B.NGP. Vakil hereto annexed. The cost of construction of buildings in excess of the sum shall be met by the Secy. of State."

It will be seen that under the indenture, it is incumbent on the Govt. to construct the wards in the vicinity of the Civil Hospital. Hence even if the Hospital is shifted to a

new site the reserved wards for Parsees and Europeans will have to be constructed on the new site also. Of course, if the Court permits the throwing open of the European wards to the Public on the grounds stated in R.L.A's opinion, such reservation need not be made for Europeans.

Sd/- B.K. Chikarmani 14/9

A.A.S.

The question is not properly examined. Has Govt. as trustees, power to shift the existing Hospital? If not, can it do so without the sanction of the Court. Pl. reconsider.

Id/- E.P.B. 14/9

Mr. Ch.

Resubmitted :-

In as much as the indenture entered into between K.B. Navroji Vakil and Govt. is silent, it can be presumed that Govt. as trustees have power to shift the existing Hospital to a new site. The liability to maintain the reserved wards attaches to the Hospital under clause (i) of the Indenture and not to the place where the present Hospital is situated. Even if it is ultimately found necessary to approach the Court for sanction, the Court, it appears will not withhold its sanction to shift the Hospital (as such withholding would defeat the purpose of charity), provided that the reserved wards are maintained in tact.

Id/- B.K.C. 17/9

A.A.S.

From the note of the D.S. Secy, H. & L.G.D. Deptt it appears that a new Civil Hospital is to be constructed on a new site. On construction of the new Hospital, the existing Civil Hospital would

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Although there is no provision in the indenture of 1918 for the continuance of the reservation if, for any reason, the existing civil Hospital is shifted to a new site, Government with the sanction of the Court will have to make some provision in the new civil hospital so as to conform to the intentions of the donor.

Id/- P.M.L. 27/10
Remembrancer of Legal Affairs.

U.R. to H. & L.G.D., No. 10098, dated the 28th October 1948.

(See also R.L.A's No.8191, dated 16-6-50 - File O. Charities/50.

KAH/28-5.
4 c.